ONE HUNDRED TENTH CONGRESS

U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515–6115

JOHN D. DINGELL, MICHIGAN
CHAIRMAN

October 9, 2007

The Honorable Kevin J. Martin
Chairman

The Honorable Michael J. Copps
Commissioner

The Honorable Jonathan S. Adelstein
Commissioner

The Honorable Deborah Taylor Tate
Commissioner

The Honorable Robert M. McDowell
Commissioner

Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Dear Chairman and Commissioners:

You have before you petitions from AT&T, Embarq, Frontier, Citizens, and Qwest for forbearance from regulation of certain advanced, business-oriented broadband services, as well as requests in a separate proceeding from other parties to re-regulate old, "special access" services that the FCC deregulated in 1999. In my view, the proper course to promote investment, innovation, and competition for the benefit of consumers and the national economy is to grant the former, and deny the latter.

Leading up to the 1996 Telecommunications Act, Congress and the FCC recognized that advanced technologies are spurring competition. In that environment, deregulation promotes investment and innovation. As a result, we have shifted away from regulation of advanced services, and toward deregulation of traditional services where competition is present. Between 1996 and the end of 2000, quarterly investment in communications equipment more than doubled to greater than $130 billion. After the

Internet bubble burst, quarterly investment dropped to about $85 billion at the end of 2002. Then it started rising again as the FCC began further deregulation, either on its own or because of court decisions. By late 2005, quarterly investment was back to almost $120 billion.

Competition within and among different communications technologies also is growing. The number of wireless and Internet phone subscribers has exploded. New-entrant phone lines have more than tripled while the number of incumbent lines has dropped. And as of June 30, 2006, the high-speed data market was almost evenly split between the incumbent phone companies on the one hand, and new entrants and cable operators on the other. The business market is particularly competitive for computer networking "Ethernet" services. No one entity has more than 20 percent of the market, and Time Warner Telecom is the third largest provider with 14 percent, behind AT&T and Verizon.

Against this backdrop, the forbearance provisions of the 1996 Act require the FCC to stop applying regulations that are no longer necessary. The particular "me too" forbearance petitions before you seek similar relief as Verizon was granted last year. They pertain to advanced, high-capacity, broadband-related offerings, including fiber optic and packet-switched services. And they are offered in a vigorous and sophisticated business market. Moreover, we are not talking about older, DS1 and DS3 special access services here, as was made clear in our October 2, 2007, hearing in the Subcommittee on Telecommunications and the Internet.

Those special access services are still subject to a modest amount of regulation under the "pricing flexibility" regime adopted in 1999 by the FCC, then led by Chairman William Kennard. Under that regime, if an initial set of competitive triggers is met, incumbent providers are allowed to enter into individualized contracts with their large business customers governing the prices, terms, and conditions of the special access service, including volume and term discounts. They still must file the contracts with the FCC, however, and offer the same terms to similarly situated customers. Only if a second set of triggers is met are price caps removed. Even under this regime, the incumbents' "last mile" services to the premises largely still remain under price-cap regulation today.

As an added measure of protection, these services, like all others within the FCC's jurisdiction, are subject to FCC enforcement authority. That avenue is always available. And yet, despite claims by the competitive local exchange carriers and the wireless providers that there is a problem in the special access market, they have filed few complaints, and none recently.

As the October 2 hearing demonstrated, there is significant competition from traditional and non-traditional sources in this market, and certainly insufficient evidence of market failure to warrant a reversal of the pricing flexibility regime. Indeed, prices have gone down, indicating that the market is working. Purchasers of special access are sophisticated customers with the ability to shop around for the best deals and leverage

one provider against another. Artificially lowering rates through regulation would set the wrong incentives by discouraging further investment by the incumbents and encouraging the new entrants to continue to rely on the incumbents' facilities rather than expand their own.

So what we are talking about is modest regulatory restraint on new services and gradual deregulation of old services where competition is present. It would be best for consumers and the nation's economic health if you would grant the forbearance requests, and refrain from reversing the pricing flexibility that Chairman Kennard wisely afforded special access services in 1999. There was competition then. There is more, now.

Thank you for your attention to this matter. Please include a copy of this letter in the dockets for the relevant proceedings.

Sincerely,

Joe Barton
Ranking Member